



“Labor and Human Rights in Cambodia”

Statement of Tola Moeun

Executive Director, Center for Alliance of Labor and Human Rights (CENTRAL)

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Thank you very much to Congressmen James McGovern and Christopher Smith for providing me the opportunity to testify at this hearing. In September 2009, I testified at the Tom Lantos Human Rights Commission’s “Human Rights and Rule of Law in Cambodia” hearing on the labor rights situation in Cambodia. Unfortunately, many of the issues on which I spoke then remain problems today, with little to no improvement.

Poverty wages

Low wages remain an enormous inhibitor to proper realisation of and active demand for labor rights and fundamental freedoms in Cambodia. When I testified at the Commission in 2009, the minimum wage for garment and footwear sector workers was US\$50 per month. In 2019, the figure is US\$182 per month. Whilst the minimum wage for garment and footwear sector workers has risen year-on-year since violent protests broke out in Phnom Penh at the end of 2013¹, the current level remains insufficient and well below the level of a living wage.

For example, garment and footwear workers in December 2018 reported their monthly expenses for food, accommodation, utilities and assorted expenses (e.g. gasoline, phone cards, clothing) as coming to approximately US\$180 - \$190 per month.² This estimation did not include other expenses such as children’s education, debt or healthcare costs. Food costs, meanwhile, were calculated by workers allowing a maximum of US\$2.50 per day. Allowing so little for food results in workers being severely undernourished, with research indicating that female Cambodian garment workers intake approximately half of the recommended daily intake of 3000 calories for women working in industrial sectors.³ As such, in order to meet living expenses, workers are effectively forced to work overtime for extra income, resulting in their working at least 60 hours per week, 6 days per week. This combination of malnutrition and overwork, in conjunction with the hot working conditions regularly found in garment and footwear factories, is a significant driving factor in regular incidences of mass fainting in Cambodian factories.

It is important to note as well that the \$182 per month minimum wage applies only to workers in the garment and footwear sectors. Minimum wage levels have not been set in any other sector in Cambodia. This is despite the introduction of the Law on Minimum Wage in July 2018 which sets out a mechanism to introduce a national minimum wage in Cambodia for all workers, who fall under the provisions of the Labour Law.⁴ Consequently, a significantly large proportion of Cambodian workers receive a wage that is far below \$182 per month. For example, many tourism sector workers receive base salaries of between \$80 - \$120 per month – with service charges paid by customers subsidising their wages. This means, without customers, workers will not earn more than their base salaries.

¹ <https://www.voacambodia.com/a/four-killed-as-riot-police-fire-on-demonstrators/1822935.html>

² https://www.central-cambodia.org/wp-content/uploads/2018/12/Rising-Production-Targets-Undermining-Wage-Increases_CENTRAL_2018-1.pdf p. 4

³ <https://www.central-cambodia.org/wp-content/uploads/2018/05/GBV-Gap-May-2018.pdf> p. 71

⁴ Law on Minimum Wage (2018), art. 2

Domestic workers and workers in the agriculture, construction, and food and service sectors similarly often receive wages lower than \$182. This is particularly apparent in small and medium-size enterprises, with full-time positions regularly advertised for between \$100 to \$150 per month. Large international enterprises, however, do not pay higher wages either. For example, workers at the Sofitel hotel in Phnom Penh receive as little as \$85 per month as a base salary.

Minimum wage setting mechanism

Currently, Cambodia is in the process of negotiating the minimum wage for the garment and footwear sectors for 2020. The discussions began in July 2019, with National Minimum Wage Council to decide on the minimum wage level in October 2019.⁵ However, despite being trumpeted as a tripartite decision-making process, the National Minimum Wage Council is far from that. Of the 17 trade union representatives⁶, only two come from independent trade unions. This is reflected in the decision of August 29, 2019 to elect Sam Aun, President of the National Union Alliance Chamber of Cambodia, a notoriously pro-ruling party union, as Vice-President representing trade unions on the National Minimum Wage Council.⁷ In this sense, it is extremely difficult to view the minimum wage determination mechanism as truly tripartite. Whilst the Government claims that the minimum wage is set after consultation with unions, in reality, when viewing the composition of trade union representatives, it appears that the Government is doing little other than consulting with its own supporters. The prospects for the 2020 minimum wage in the garment and footwear sectors looks particularly grim, with the Garment Manufacturers' Association in Cambodia (GMAC), the largest employer representative body in the garment and footwear sectors, calling on the Government to keep the minimum wage figure unchanged in 2020.⁸

Production targets and wage

During the current round of minimum wage negotiations, GMAC have been particularly vocal in demanding that any increase in the minimum wage be accompanied by corresponding productivity increases.⁹ In fact, this is a practice that is already implemented regularly by factories following increases to the minimum wage. However, factories have responded to minimum wage rises not only by demanding productivity increases, but also by reducing staff numbers. For example, workers at a factory supplying to 5.11 Inc, H&M, Gap and Levi-Strauss reported that in 2012, a production line of 105 people would have a target of 1500 pants per day. As of December 2018, though, the target was 2300 pants per day for a production line of 55 people.¹⁰

These rises in production targets particularly effect piece-rate workers, that is, workers who are paid per piece produced rather than receiving a guaranteed salary. For example, workers at a C&A supplier reported that the piece rate (0.28 per piece in the factory) did not change in tandem with minimum wage rises. As a result, after the minimum wage increased from US\$153 in 2017 to US\$170 in 2018, the production target for certain styles of shirt was simply raised from 70 shirts per hour to 80 shirts per hour.¹¹ In this sense, piece rate workers have not experienced any practical pay rise – only an increase in the minimum workload they are expected to complete. Whilst piece rate workers are

⁵ Notification No. 024/19 of the Ministry of Labor and Vocational Training on the Schedule of Minimum Wage Negotiations in the Textile, Garment and Footwear Sectors for 2020, dated 17 July 2019.

⁶ Prakas No. 359/19 of the Ministry of Labor and Vocational Training on Editing the Appointments of Members of the National Minimum Wage Council dated 28 August 2019.

⁷ Statement of the National Minimum Wage Council dated 29 August 2019.

⁸ <https://www.khmertimeskh.com/50640019/gmac-eyes-no-minimum-wage-increase/>

⁹ <https://www.khmertimeskh.com/50640403/gmac-urges-government-to-reduce-financial-burden-on-employers/>

¹⁰ https://www.central-cambodia.org/wp-content/uploads/2018/12/Rising-Production-Targets-Undermining-Wage-Increases_CENTRAL_2018-1.pdf p. 4

¹¹ Ibid., p. 5

theoretically ‘guaranteed’ the minimum wage even if they do not complete sufficient pieces¹², in reality, workers who fail to regularly meet production targets often face termination, suggesting this ‘guarantee’ does not work in practice. For example, workers at a H&M supplier reported that if they make a mistake or fail to meet a production target, they are issued with a warning. If they receive three warnings, they are subject to termination.¹³

Consequently, in order to avoid the consequences of failures to meet production targets, workers often go without proper rest or water. For example, workers at a Walmart supplier reported that in order to meet production targets, they are forced to spend half of their lunch break working unpaid.¹⁴ This is not a direct requirement of factory management, but rather a practical requirement self-imposed by the workers in order for them to meet their targets. Workers at the same factory also stated that they are unable to keep a water bottle at their desk.¹⁵ When they wanted to drink, they had to walk to a water tank to drink; however, workers stated that they do not do this for fear of not fulfilling production targets. Workers at a Gap and Levi-Strauss supplier similarly reported that they had no time to drink water or go to the toilet, with each worker needing to operate two or three machines in order to meet production targets.¹⁶

Violence and production targets

Along with formal disciplinary actions, failure to meet production targets often exposes workers to verbal abuse, violence and threats. For example, in 2018, workers at Gap and Levi Strauss suppliers reported being verbally abused by managers for failure to reach production targets¹⁷, whilst workers at a since-closed Walmart supplier also reported in 2018 that line leaders also receive bonuses – higher than that of ordinary workers – if production targets are met.¹⁸ In this sense, line leaders are directly incentivised to push workers to work harder, which may itself contribute to instances of violence against workers. In some cases, this comes as a direct result of pressure applied to often-local line leaders by foreign management.¹⁹ Verbal abuse is also prominent in instances where workers take toilet or drink breaks.²⁰

Physical violence is also a common occurrence in Cambodian factories. This violence is intrinsically linked to enforcement of production targets. For example, workers at two Gap suppliers reported suffering physical violence directly at the hands of Chinese managers.²¹ Workers at the same two factories also reported that Chinese management would hurl bundles of garments at them in anger.²² These bundles may weigh between two and four kilograms – a projectile that is approximately the weight of a brick, but unlikely to leave visible marks that would allow the victim to seek redress. Similarly, workers at Walmart suppliers also reported instances of physical violence at the hands of Chinese management.²³ Physical violence also occurs for other reasons outside of production targets. For example, in August 2019, an independent union leader at a garment factory in Kampong Chhnang province was violently assaulted by a Chinese manager for refusal to move his work location to a different section of the factory.²⁴

¹² Law on Minimum Wage (2018), art. 7.

¹³ https://www.central-cambodia.org/wp-content/uploads/2018/12/Rising-Production-Targets-Undermining-Wage-Increases_CENTRAL_2018-1.pdf p. 5

¹⁴ https://www.central-cambodia.org/wp-content/uploads/2018/12/Rising-Production-Targets-Undermining-Wage-Increases_CENTRAL_2018-1.pdf p. 6

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ <https://www.central-cambodia.org/wp-content/uploads/2018/05/GBV-HM-May-2018.pdf> p. 66

¹⁸ https://www.central-cambodia.org/wp-content/uploads/2018/12/Rising-Production-Targets-Undermining-Wage-Increases_CENTRAL_2018-1.pdf p. 6

¹⁹ <https://www.central-cambodia.org/wp-content/uploads/2018/05/GBV-Gap-May-2018.pdf> p. 62

²⁰ Ibid.

²¹ <https://www.central-cambodia.org/wp-content/uploads/2018/05/GBV-Gap-May-2018.pdf> p. 59

²² Ibid.

²³ <https://www.central-cambodia.org/wp-content/uploads/2018/05/GBV-Walmart-25-May-2018.pdf> p. 52.

²⁴ <https://www.facebook.com/CentralCambodiaOrg/videos/359014778101384/>

Freedom of association and assembly

Freedom of association remains significantly restricted in Cambodia. In 2009, I testified on the repression of the right to freedom of association and peaceful assembly in Cambodia. Unfortunately, there has been little positive progress in these areas, and rather a further decline in the general human rights situation, since I last testified.

Freedom of association and assembly in Cambodia is restricted through a combination of a number of factors including low wages, baseless criminal complaints, legislative developments, the proliferation of short-term contracts and discriminatory practices employed by management.

Low wages

Low wages have a direct effect on workers' ability to exercise their freedom of association and organise themselves into independent trade unions. Workers who are brave enough to form and stand as leaders of independent trade unions routinely have their employment terminated for doing so. As discussed above, the wages which the vast majority of Cambodian workers receive are far below that of a living wage. Workers are effectively living hand-to-mouth – at times unable to sustain a living for their families, let alone to accumulate savings. Consequently, many workers are unwilling to take on the risks associated with union participation for the simple fact that they cannot afford the risks to their employment because of their low wages.

Baseless criminal complaints

Baseless criminal complaints have been used as an attempt to silence and pressure trade unions at both the local and federation level. Since 2012, at least 84 criminal complaints have been filed against local and federation level trade union leaders, members and activists. A significant number of these cases still remain in the investigative stage years after charges were filed. Along with pending and ongoing cases, charged trade unionists are often also placed under strict bail conditions requiring monthly reporting to police in the district in which they were charged. This can have significant impacts on their ability to find other work. For example, nine workers at a Walmart supplier were charged with a number of criminal offences including incitement, intentional violence and intentional damage to property, following strike action conducted outside the factory in 2014. Their charges remained in the investigative stage until a hearing on December 27, 2018. During this interim period of four years, the charged workers were required to report to police monthly in the district of Kampong Cham province, in which they had been charged. Following the charges, they were terminated from their employment and blacklisted from other factories in the area. Because of the reporting conditions placed upon them, they were effectively prevented from moving to Phnom Penh for employment, leaving their only options for regular employment as low-paying agricultural work.

In recent months, courts across Cambodia have dropped a number of criminal complaints against trade unionists. This has come largely at the behest of Prime Minister Hun Sen, who in November 2018 ordered the Ministry of Justice and the Ministry of Labor and Vocational Training to intervene at the courts to speed up processing of cases or have the charges dropped.²⁵

²⁵ <https://www.khmertimeskh.com/548329/hun-sen-urges-courts-to-drop-charges-against-union-leaders/>

Whilst in some cases charges have indeed been dropped altogether, in others the court has taken a different approach, finding those charged guilty and sentencing them to suspended prison sentences. For example, on 11 December 2018, the Phnom Penh Municipal Court sentenced six union leaders to suspended prison sentences on charges of instigating intentional acts of violence, intentionally causing damage, threats to destroy property and blocking public traffic as a result of their role in minimum wage protests in Phnom Penh in 2013.²⁶ At trial, prosecutors failed to produce any evidence to establish that the six had committed the crimes charged, nor were any witnesses produced to prove the accused had acted violently during the protests. The six unionists were initially charged with committing the violence but were actually convicted of having instigated the acts. The change in charges was never disclosed to the accused or their lawyers, depriving them of the chance to effectively challenge and refute the prosecution's case. The effect of a suspended sentence under Cambodian law is such that if any of the six were to commit any other felony or misdemeanour within the next five years they would face immediate imprisonment. Whilst these union leaders' convictions were ultimately overturned on appeal²⁷ following an international campaign²⁸, others, particularly trade unionists at the local level, have not been as fortunate.

Law on Trade Unions

In 2016, the Cambodian Government passed the Law on Trade Unions. Despite the final version of the Law including several improvements over earlier drafts (for example, the inclusion of the Article 7 freedom to not join a union), the Law still requires significant amendments to be compliant with international standards. In its current form, it imposes unnecessarily burdensome registration requirements on trade unions, and unjustifiably restricts trade unions' abilities to operate freely and in the interests of their members. In addition, the Law imposes fines on individuals and trade unions who do not comply with these provisions.

The Law imposes a number of registration requirements on unions, including mandated requirements for union statutes²⁹ and submission of annual financial and activity reports to the Ministry of Labor³⁰. Failure to submit leaves unions open to deregistration. In order to acquire registration, unions are required to submit an enormous list of documents (along with several copies of each) including names of leaders and all members.³¹ These requirements are unjustifiably onerous and prove a significant obstacle to proper freedom of association in Cambodia. A 2018 report on fundamental freedoms in Cambodia found that 81.08% of monitored trade unions found registration forms difficult to complete, with only 45.8% of monitored unions successfully registering with the Ministry.³² Unions who had still not successfully registered reported that their applications were pending because of minor issues such as formatting, font and spelling.³³ When seen together, Articles 11, 12, 13 and 17 can be seen as restricting workers' supposed rights to form trade unions of their choice. Whilst these provisions do not explicitly deny workers the right to form trade unions, they effectively prevent workers from establishing trade unions without the express permission and approval of the Ministry, by denying further rights under the Law to unregistered unions.

Moreover, unions which fail to comply with the burdensome reporting requirements of the Ministry run the risk of being deregistered, and their leaders prevented from further union activity. The

²⁶ <https://www.phnompenhpost.com/national/union-leader-six-found-guilty-over-violent-protests-2013>

²⁷ <https://www.khmertimeskh.com/609128/appeal-court-overturms-convictions-of-six-unionists/>

²⁸ <https://www.central-cambodia.org/archives/2492>

²⁹ Law on Trade Unions (2016), art. 13

³⁰ Ibid., art. 17

³¹ Ibid., art. 12

³² https://cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=128&id=5 p. iv

³³ Ibid., p 25

requirements under Article 17 to submit annual financial and activity reports to the Ministry in order to maintain registration constitute an unjustifiable intrusion into trade unions' abilities to freely operate. In the Cambodian context, such governmental oversight, including with respect to the financial management and activities of trade unions, is dangerous. Except for when trade unions violate Cambodian law (for example, provisions relating to maintenance of public order and safety), the Cambodian government should not be provided with such unfettered and broad discretion to arbitrarily deny registrations, suspend unions or dissolve them altogether. The Trade Union Law appears to exist for the purpose of enabling the Ministry to scrutinize trade unions and to monitor their activities.

Under Article 54 of the Law on Trade Unions, the "exclusive right" to enter into collective bargaining negotiations or collective labor dispute resolutions is extended to the union with **"most representative status"** at the enterprise or establishment level. In order to acquire this most representative status, the union must, in addition to being legally registered, have at least 30% of the enterprise or establishment's total workers amongst its members, or have support from other unions in the enterprise or establishment to reach that threshold. As with initial registration, whether or not a union receives most representative status is the decision of the Cambodian Government, with the Minister of Labor and Vocational Training given the power to make a determination either way under Article 57. Under Article 57, the mere fact that a union satisfies the criteria of Article 54 does not guarantee receipt of most representative status; ultimate discretion lies with the Minister.

Moreover, Chapter 9 of the Law unduly restricts union activity, particularly with respect to collective bargaining. In its current form, the Law effectively prevents the process of collective bargaining from taking place by granting the exclusive right to engage in collective bargaining to the union with most representative status. Minority unions who attempt to fulfil the roles exclusively granted to unions with most representative status are subject to fines under the Law. Under the Law in its current form, a collective bargaining agreement could theoretically be negotiated by a union with the minimum requirements for most representative status. That is, a collective bargaining agreement could be reached between the employer and a union which represents only 30% of the enterprise's workforce. In this scenario, an agreement would be made that applies to all workers in the enterprise, but 70% of the workers were not represented in the collective bargaining process.

In February 2019, the Cambodian Government announced its intention to amend the Law on Trade Unions. On April 22, 2019, a Draft Law amending Articles 3, 17, 20, 21, 27, 28, 29, 54, 55 and 59 of the Law on Trade Unions was issued by the Ministry of Labor and Vocational Training. On April 25, 2019, a tripartite meeting was held between trade unions, government officials and employers' representatives, to discuss the proposed amendments. The entire amendment process is expected to take until the end of 2019.

The process of amendment is ultimately negative. Whilst the Ministry will naturally claim that the process is inclusive by virtue of it being tripartite, the fact of the matter is that, similar to the minimum wage mechanism discussed above, a significant number of unions participating are not truly independent unions. For example, the pro-government National Union Alliance Chamber of Cambodia is participating as a workers' representative, alongside a number of other pro-government unions. In these circumstances, it is difficult to see how there is any semblance of a power balance in the amendment process. Truly independent unions make up a mere fraction of the union representatives' side and even less of a percentage of the overall process. As such, it seems probable that they will be unable to have much, if any, genuine impact in the amendment process, with the likely result being

that the amendments ultimately passed are simply those included in the Draft Law issued in April with some minor, largely inconsequential changes.

Short-term contracts

Freedom of association is also significantly restricted through the widespread usage of short-term employment contracts in Cambodia. The impact of short-term contracts on labor rights was an issue I spoke on during my previous testimony in 2009. Since that time, short-term contract usage has remained widespread in Cambodia, with many employers violating the maximum periods prescribed by the Labor Law for engagement of workers on fixed-duration contracts.

In May 2019, the Ministry of Labor and Vocational Training issued new Guidelines regarding fixed-duration contract usage.³⁴ These Guidelines undermine consistent Arbitration Council interpretation of Article 67 of the Labor Law which prevents employers from employing workers on fixed-duration contracts after two years' employment.³⁵ Under the new Guidelines – which have less legal force than the Labour Law – an employer could theoretically engage a worker on successive fixed-duration contracts for a maximum of four years.

Workers employed on these contracts have no sense of job security and experience non-renewal of their contracts for reasons including union participation and pregnancy. As such, extending the period of time in which workers can be engaged on these short-term contracts is absolutely detrimental to labour rights and fundamental freedoms in Cambodia. We have seen this already in cases of workers employed on short-term contracts who dare to stand as leaders of independent trade unions. For example, at one factory which supplies to clothing brands Inditex and Bestseller, short-term contracts of seven workers were not renewed, less than a month after forming an independent trade union in the factory. Whilst termination of a union leader without ministry approval is illegal under the Law on Trade Unions, in this case, the ministry took the view that non-renewal of a union leader's fixed-duration contract did not violate the law. As such, these terminated leaders have not been reinstated and the factory no longer has an independent trade union. Disappointingly, both Bestseller and Inditex have refused to acknowledge the contract non-renewals for what they were: employment decisions made on the basis of the workers' exercise of union activities and therefore illegal under Article 12 of the Labour Law.

Practices by employers

Independent trade unions are routinely targeted by employers in aggressive union busting tactics involving bribes, termination and even criminal complaints. Meanwhile, government-controlled and management-aligned unions are free to operate unimpeded, with their leaders regularly provided financial and other incentives in exchange for remaining silent on issues affecting workers. For example, at another factory supplying to Inditex, four independent union leaders were terminated after forming a union in the factory. Upon the complaint being raised to brands sourcing from the factory, management claimed that they were prepared to reinstate the workers, but that another union in the factory threatened to conduct strike action if they were reinstated. However, this union was a management-aligned union and was protesting reinstatement of the independent union leaders at the behest of factory management. These workers are yet to be reinstated and consequently there is no longer any independent union presence in the factory.

³⁴ Guidelines No. 050/19 on the Determination of Categories of Employment Contract dated 17 May 2019.

³⁵ See e.g. Arbitration Council Award No. 10/03 – Jacqsintex; No. 043/17 – Pou Yuen; No. 054/18 – Roo Hsing.

Recommendations

I believe the Cambodian Government should take a number of steps to bring itself into line with the International Covenant on Civil and Political Rights, as well as ILO Conventions 87 and 98 – all of which have already been ratified by Cambodia and which form part of Cambodian law through the Constitution.³⁶

I encourage the United States, by utilising leverage associated with the Generalised System of Preferences (GSP), and the Royal Government of Cambodia to negotiate a roadmap, in conjunction with other international partners, that sets out specific, time-bound human and labor rights benchmarks in line with international standards. This should include ongoing assessment of progress and targeted consequences (positive and negative). Precedents for roadmaps can be found in the EU-Bangladesh Sustainability Compact, the EU Roadmap with Colombia and Peru, the US-Colombia Action Plan, as well as the US-Vietnam Labour Plan.

Additionally, the Cambodian Government should review and properly amend the Law on Trade Unions through full and genuine consultation with workers, independent trade unions, labor advocates and other stakeholders to bring it into full compliance with ILO standards. These amendments should go beyond those currently included in the proposed Draft Law. Specifically:

- Amend Article 3 to extend the law’s coverage to all workers, including those in the informal sector (tuk-tuk drivers, domestic workers, street vendors etc.)
- Remove all provisions relating to most representative status under Chapter 9 of the Law
- Ensure a transparent and effective registration process to guarantee the associational rights and freedoms of workers as well as address the backlog of pending applications. This should include, but not be limited to:
 - Removing prior authorisation requirements and replace them with a system of prior notification;
 - Removing provisions and onerous conditions limiting unions’ ability to operate prior and during the registration process;
 - Removing prerequisites that require union leaders to be literate and provide family background information;
 - Removing from the Law and implementing Prakas the penalty of suspension, fine or dissolution for failure to meet reporting requirements.

The Cambodian Government should ensure that workers have a credible venue to resolve industrial disputes by strengthening the Arbitration Council by way of amending Article 313 of the Labor Law and Article 40 of Prakas 99 to make all Arbitration Council decisions binding and ensure enforcement of outcomes.

The Cambodian Government should revoke the recent Guideline No. 50/19 issued by the Ministry of Labor and Vocational Training, which undermines the two-year maximum period on fixed-duration contracts prescribed by Article 67 of the Labour Law.

The Cambodian Government needs to beef up its consular affairs in Thailand, Malaysia and elsewhere to help its migrant workers who face labor rights abuses there.

³⁶ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007), https://www.ccc.gov.kh/admin/uploads/dec_2007_92.pdf.